

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KATE E. KELLY,

Plaintiff,

Case No. 22-cv-590-pp

v.

KILOLO KIJAKAZI,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING THE FILING FEE (DKT. NO. 3)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff indicates that she is not married, she is not employed, and she has no dependents she is responsible for supporting. Dkt. No. 3 at 1. The plaintiff's monthly income is \$800 (\$250 Food Share, \$200 "selling random stuff," \$350 "financial gifts from friends and family.") Id. at 3. The plaintiff pays \$500 per month toward her

housing and \$300 for other household expenses (\$250 food, \$50 utilities). Id. at 2-3. The plaintiff does not own a car; she owns her home, worth approximately \$165,000 with \$15,000 in equity; she owns no other property of value; and while she checked “yes” when asked if she has cash or checking, savings, or other similar accounts, she did not fill in the amount of those holdings. Id. at 3-4. The plaintiff states, “Both my fiance and I are on the title for our home, but only he is on the mortgage. I help where I can with money from friends and family.” The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

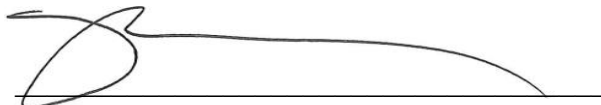
The plaintiff’s complaint indicates that she was denied benefits by the Commissioner, that she is disabled, and that the conclusions and findings of fact of the Commissioner when denying benefits are not supported by substantial evidence and are contrary to law and regulation. Dkt. No. 1 at 1. At this early stage in the case, and based on the information in the plaintiff’s

complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 18th day of May, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge